# Highlight on Brazilian Arbitration Act

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## 1. History of Arbitration in Brazil

**1.1** Contrary to common perception, Brazil has a rich history in the use of arbitration as a means of dispute resolution.

As an example, since the 19th century, Brazil has successfully used arbitration to settle international border and territory disputes.

In the late 1800s and early 1900s, Brazil joined many countries, including Chile, Switzerland, France, China, Great Britain and the United States, in signing treaties in which the countries made a commitment to solve potential disputes by arbitration.

Brazil settled border disputes with Argentina and British Guyana by arbitral award in 1900.

The highly contested dispute with Bolivia over the territory of Acre was also resolved by arbitration.

Arbitration was also used in 1910 to successfully settle the mutual claims with Peru regarding problems originating in the border.

An early example of the success of arbitration in the international scenario was the settlement with the United States to bring to an end the identification claims resulting from the shipwreck of the American vessel "Canada" on Brazilian shores.

In the same period, Brazil arbitrated disputes with Sweden and Norway that resulted from nautical collisions.

In addition, Brazil's experience with arbitration includes participation by prominent Brazilian citizens on international arbitration tribunal, often cases of major import.[2]

**1.2.** The Brazilian tradition of arbitration can also be followed in Positive Law.

The first Political Constitution of 1824 contained provisions for settling disputes between nationals and foreigners by arbitration. Moreover, the arbitrator's decision could not be appealed if the parties had established a non-recourse clause.[3]

A short time later, arbitration was implemented as the mandatory means for resolving disputes arising from insurance contracts (1831) and services agreements (1837).

The Commercial Code was enacted in 1850, and arbitration quickly gained a stronghold in resolving

corporate dilemmas, in addition to contractual and bankruptcy disputes.

Arbitration was also recognized legally for dispute resolution in the 1916 Civil Code and the Civil Procedure Codes of 1939 and 1973.

As we see Brazil has traditionally used arbitration to resolve sovereignty issues, international conflicts, and has, since the first Constitution, reserved and dedicated legal space to arbitration in its main legislation.

Therefore, the real question is why has the use of arbitration remained dormant in recent decades, only to resurface now as established practice?

**2.** The Ineffectiveness of the Submission Agreement ("Compromisso")

**2.1.** To answer this question, we must look back to the year 1867, when Decree n. 3900 expressly conditioned the effectiveness of arbitration clauses on the execution by the parties of a new and special agreement designated the compromisso, which can perhaps best be translated as submission agreement.

By the terms of Decree n. 3900, the compromisso was the only suitable means to overcome state jurisdiction.

A contract could not provide in advance for any solution other than litigation.

Only after the dispute had arising out could the parties specify in a separate document (the Compromisso) the scope of their dispute and that it would be settled by arbitration.

In fact, such Decree made agreements to resolve future disputes unenforceable.

Since then, an arbitration clause has been considered by most legal doctrine and jurisprudence to be a merepactum de compromittendo, or promise to agree, depending on the later signature of the compromisso to give it validity and enforceability.

Although there was a theoretical possibility of demanding damages from a party who defaulted on its obligation to enter into a compromisso, the fact was that the predispute arbitration clause was true caput mortuurn - a dead letter.

**2.2.** Later laws made the situation worse.

A law was enacted requiring the State Court with jurisdiction to homologate, or approve, any arbitral award in order for it to have legal effect.

The insertion of an arbitration clause in a contract was thus not enough. It was necessary that the parties both sign a compromisso upon the existence of the dispute and, in addition, that the arbitration award receive judicial approval (homologation).

In the case of the foreign award, this required double approval (double exequatur or recognition) since the

award had to be approved by the Court in the jurisdiction were the award was rendered as a prior condition for the Supreme Court homologation.

The compromisso and the homologation requirements were major impediments to the use of arbitration in Brazil.

**2.3.** In addition to these two obstacles, other impediment of a psychological or cultural nature existed and are still concerns today.

State paternalism permeates Brazilian society. There is an expectation that the State will solve societal problems, even when the relevant issues do not pertain to the traditional role of the State.

The omnipresence of the Brazilian State greatly affected the development of private alternatives to the state court.

This history of paternalism impeded the practice of arbitration from finding a place in Brazil.

The power of the State does not allow for independent methods of justice.

State protectionism does not tolerate a court that exists only because of the will of the parties.

If only the State has the power to resolve disputes among those in its vast jurisdiction, the individual must accommodate, capitulate, and find himself unable to solve his own problems.

In such a paternalistic environment characterized by the psychological weakness of the individual, the development of a legal institution based in the freedom to contract is difficult.

**2.4.** However, new winds are now blowing in favor of modernity.

The privatization and the deregulation of the economic sectors in the early 1990s have given a new vitality to Brazilian culture in general.

Now that the State has started to play a more traditional role in society, the opportunity to do private business has increased.

Moreover, the previous status quo has been abandoned, and the State is now advocating greater citizen participation in forming administrative, legal, and political decisions.

This new scenario, combined with a general dissatisfaction of society with the inactivity and passivity of the State, especially in relation to limited access to justice, has led to the introduction in 1996 of Law n. 9307/96, which now governs arbitration in Brazil.

This should have helped Brazil become a more hospitable environment for arbitration but a problem arose regarding enforcement of the Act by the Courts.

**3.** Is The Brazilian Arbitration Act Unconstitutional?

**3.1** Soon after the enactment of the Arbitration Act, one of the Supreme Court's justice, taking advantage of a request for homologation of an arbitration decision awarded in Spain4, recommended the previous judgement by the eleven members of the Court of the possible unconstitutionality of the arbitration act.

The concern referred to the confrontation of the arbitration act and the content of art. 5, XXXV of the Brazilian Constitution, that says the following: "The law will not be able to exclude from the judgement of the Judiciary any violation or threaten to a legal right".

Based on this rule voices raised against arbitration on the assumption that waivers of States jurisdiction were not permitted.

The debate regarding the constitutionality issue undoubtedly brought to bail the ideological content and the extreme conservativeness of some members of the Supreme Court, that feared the unknown consequences of the potential "privatization of justice" and the consequent lack of prestige of the Judiciary Power.

However, the majority of the Court agreed - by seven favorable votes against four - that Article 5 of Brazilian Constitution poses no impediment to the enforceability of the arbitration act which means that, after more than four years of debate, the arbitration law was ruled constitutional.

**3.2** It must be stressed that the Supreme Court had already unanimously declared constitutional the arbitration in the 60 's, in a proceeding where the Federal Government tried to avoid the payment of an indemnification imposed in an arbitral procedure.[5]

However, the legal nuance that differs this earlier case from the recent judgement is that the latter applies erga omnes while the former produces legal effects solely between the parties involved in the lawsuit.

**4.** The Legal Nature of Arbitration According to the Provisions of the Brazilian Act

**4.1** Before starting the analysis of some legal aspects of brazilian arbitration law, it would be convenient to highlight the jurisdictional nature regarding the arbitrator's activity, adopted by the brazilian arbitration act.

The legislator surely attempted to expressly register in the brazilian law the public vocation of the arbitration.

The jurisdictional nature originates from various provisions comprising arbitration act. For example, the arbitration award, for all legal purposes, is equivalent or comparable to the State Court judgment. In this sense, the arbitrator's decision has the same legal effect as the State Court judgment.

Therefore, it may be declaratory, constitutive and condemnatory. If the arbitration award is condemnatory, the judicial enforceability shall occur the same way as the enforceability of a State Court judgement.

This means that when the legislator included the arbitration decision within the judicial enforceable titles, he strongly restricted the defaulting party's arguments in defense.

**4.2** Likewise, by equalizing or comparing the legal effects of the arbitration award to judgement rendered by the state courts, the law extends to the arbitration award the res judicata effect (quality).[6]

The award, therefore, is conclusive between the parties in the same or subsequent proceeding.

**4.3** On the other hand, the arbitration decision cannot be appealed provided that it does not infringe relevant legal rules, as listed on Article 326.[7]

Based on such jurisdictional concept we should stress that the arbitrator is expressly considered "de facto and legally a judge".[8]

**4.4** On the other hand the arbitrator has authority to impose coercive or injunctive order (provisional remedies).[9]

**5.** The Principle of the Autonomy of the Arbitration Clause

**5.1** Brazilian law has absorbed, in its totality, the concept of the autonomy (separability) of the arbitration clause.

As per art. 8 the arbitration agreement is independent of the contract in which it is inserted, in such a way that the nullity of the contract does not imply, necessarily, the nullity of the arbitration clause.

Thus, the weaknesses of the contract are not transferred to the arbitration clause, which keeps it validity and enforceability for the purpose of establishing the arbitration.

This autonomy is also useful to enable the choice of law that will govern the arbitration clause. The law governing the arbitration clause may differ from the law governing the contract.

**5.2** The principle of competence-competence was also assimilated by the brazilian act.

The Act gives the arbitrator jurisdiction to decide issues concerning the existence, validity and effectiveness of the arbitration clause and the contract in which it is contained. Hence, the arbitrator has authority to determine his own jurisdiction.[10]

**5.3** The Arbitration Act gives the parties the right to choose the ends of law that will apply to their arbitration, as long as "their choice does not violate good morals and public policy ".[11]

It also permits them to agree that the arbitration shall be conducted under "general principles of law, customs, usages and international rules of trade".[12]

At the parties' option, arbitration may also be conducted under the rules of law or equity.[13]

**5.4** In addition, the parties can provide in the arbitration clause or in a separate document that the rules of an arbitral institution shall apply to the conduct of the arbitration or they can set out another desired procedure.[14]

**5.5** The Arbitration Act expressly contemplates an adversarial but impartial process, calling for "equal treatment of the parties, impartiality of the arbitrator and freedom of decision".[15]

**6.** Disputes subject to Arbitration.

**6.1** Only disputes related to property rights may be subject to arbitration.[16]

This includes matters that arise in the context of labor relations, consumer transactions and administrative law.

The arbitrability of disputes in Brazil has a broad scope and does also include disputes between companies and their shareholders.[17]

There are many arbitration awards in the labor area, and they have been consistently supported by state court jurisprudence.

**6.2.** There is still no consensus of the role of arbitration in consumer relations, but to date there have been no challenges presented before State Court.

However, we understand that the rule contained in the Consumer Code (enacted prior to the Arbitration Act) only prohibits arbitration when established in uniform contracts where the consumer is in a weak position with no bargaining power.[18]

**6.3** The arbitration on administrative law as in any other jurisdiction, is always subject to considerable controversies.

There has always been a lot of resistance as to the adoption of arbitration to settle conflicts involving state companies or public utility concessionaires.

In the beginning, its oppositionists sustained the existence of sovereign immunity.

After the Supreme Court jurisprudence indicated that sovereign immunity only applies to acts of state (imperium)[19]. the arbitration oppositionists raised another issue attempting to avoid the arbitration procedure on disputes involving administrative law, that is, the need of a prior and mandatory rule authorizing arbitration.

Such understanding was based on the fact that the disposition of public assets and rights is always subject to prior legislative authorization.

However the arguments raised against arbitration, although still debated, have been mitigated by judicial decisions and legislation itself.

In this sense, the Federal District Justice Court[20] and the National Audit Court (Tribunal de Contas da Uniao)[21] have already positioned themselves favorably to arbitration for solution of disputes arising from administrative agreements.

Similarly, the Public Services Permission and Concession Law[22], the Telecommunications Law[23], the Petroleum Law[24] and the Water and Land Transports Law[25] expressly allow the adoption of arbitration as a means to settle their conflicts.

On the other hand, new amendment to Brazilian Bid Law that establishes the main rules applied to administrative agreements - although under congressional - debate does also contain a provision that gives enforceability to arbitration clause.

**7.** Legal Aspects of the Arbitration Agreement

**7.1** One of the great obstacles to the development of arbitration in Brazil was the ineffectiveness of the arbitration agreement. Arbitration always depended upon the spontaneous execution by the parties of another contractual instrument - the submission agreement (compromisso) -, after the controversy had arisen.

Compromisso alone had the sole and exclusive power to bind the parties regarding the submission of the conflict to the arbitral solution.

Nowadays, with the enactment of the Marco Maciel law[26], the arbitration clause agreed upon in a bilateral agreement has double effect:

(i) repels the State Court jurisdiction (the judge has the duty to dismiss the case), and

(ii) has the power itself to establish the arbitration, according to the provisions contained in articles 5, 6 and 7 of Act No. 9307/96 27.

It must be stressed that both legal effects, positive and negative, have already been subject to several judicial decisions, which have ensured them normal treatment.

**8.** The Unnecessary Judicial Homologation

**8.1** According to the brazilian law, the approval of arbitration awards is no longer necessary.

Neither the national nor the foreign award depends on court approval, except for the latter, in case of the imperative aspect of the exequatur by the Supreme Court, due to constitutional provisions.[28]

It means to say that the arbitration decisions rendered in Brazil produce an automatic and immediate effect and the homologation of the state court is no longer necessary, pursuant to the terms of the arbitration act and the jurisprudence accepted in the judicial courts.

**8.2** The same occurs with the foreign arbitration awards, which may be effective in Brazil.

In this case the Brazilian legislation no longer requires this decision to be homologated by the state court of the country of origin. The so-called double exequatur.

Art. 6. In the absence of a prior agreement regarding the form in which the arbitration will be initiated,

the interested party may indicate to the other party its intent to initiate the arbitration by mail or any other means of communication, with a written invitation to sign a compromisso containing the indicated time, date and place to do so.

Sole paragraph. If the invited party does not appear but refuses to sign the arbitral compromisso, the other party may treat this as a situation falling under Article 7 of this Law, before the Judicial Body to which the case would have originally been assigned.

Art. 7 If a clausula compromissoria exists and there is resistance to the initiation of the arbitration, the interested party may require the other party to be summoned to appear in court in order to draw up a compromisso. A special court session shall be scheduled for this purpose.

Para. 1. The petitioner shall indicate with precision the object of the arbitration including with the petition the document containing the clausula compromissoria.

Para. 2. When the parties appear for the court session, the judge shall first attempt conciliation of the case. If this is not successful, the judge shall attempt to lead the parties to sign a compromisso agreement.

Para. 3. If the parties do not agree upon the terms of the compromisso, the judge shall decide on its contents, after he hears the defendant, at the time of the hearing or within a period of ten days, respecting the provisions of the clausula compromissoria and taking into account the provisions of Article 10 and 21, para. 2 this Law.

Para. 4. If the clausula compromissoria contains no provision about the nomination of arbitrators, the judge shall make the determination in this respect after hearing the parties, with the power to nominate a sole arbitrator to resolve the case.

Para. 5. The absence of the claimant without just cause from the session designated to draw up an arbitral compromisso shall result in the case being dismissed without judgment on the merits.

Para. 6. If the defendant does not appear at the session, it shall fall upon the judge, after hearing the claimant, to determine the contents of the compromisso, nominating a sole arbitrator.

Para. 7. The ruling derived from this claim will have the same validity as an arbitral compromisso.

For its internalization within the brazilian jurisdiction all that is required is the homologation by the Supreme Court.

In this aspect, the jurisprudence of the Supreme Court is definitive.[29]

**8.3** On the other side, it must be stressed that the Public Attorneys office, who intervenes in the homologation requests of foreign arbitration award, has been strict when fighting against those trying to prevent the homologation of an arbitral decision based on frivolous arguments.

The enforcement of penalty due to bad faith litigation has been requested by the Public Attorneys office in such cases.

**9.** The Insertion of the New York Convention in the Brazilian Scenario

**9.1** Four decades after the issuance of the New York Convention (1958), Brazil finally inserted in its legal system the rules contained therein.[30]

The key point for Brazil in adopting the New York Convention is the clear message to international community of its willingness to comply with foreign arbitration awards. It is a straight signal of brazilian will to be aligned to the best international arbitration practices.

However, to those who have been seeking recognition and enforcement of foreign arbitral awards in Brazil the adhesion to the New York Convention is more a. formal than a material issue.

That is simply because in practice the rules contained in the Convention were already adopted by Brazil since the enactment of the arbitration law, in 1996.

In fact, the drafters of the brazilian arbitration act concerned with Brazil's disregard towards the ratification of the New York Convention, attempted to resolve the issue from a pragmatic standpoint, that is, incorporate the Convention provisions in the Chapter VI of the Act, which establishes the rules to be followed by the parties that seek the recognition and enforcement of foreign arbitral awards in Brazil.

It does mean that since 1996 whoever had seek exequatur by brazilian Supreme Court had already to employ the same rules provided for in the New York Convention, due to the provisions contained in Chapter VI of the Arbitration Act.

Despite of that, and most likely influenced by the enhancements the of arbitration culture in Brazil, in the year 2002 the government decided to ratify the New York Convention and hence to put the country aligned to the other 120 signatories.

**9.2** However, immediately upon the adhesion of the New York Convention, a legal issue brought the attention of the practitioners and has been subject to strong debate among scholars, namely: article III of the Convention determines that upon recognition or the enforcement of foreign arbitral decisions there shall not be a more onerous conditions than those applied to the recognition or enforcement of national arbitration awards.

Taking into consideration that for the recognition and enforcement of a national arbitral award the homologation by judicial court is not required, it is then questioned whether the homologation of the foreign arbitration decision by the Supreme Court as a condition precedent to its validity and enforceability in brazilian jurisdiction would comprise the more onerous condition, prevented by article III of the New York Convention.

Notwithstanding opinions stating otherwise, it is my understanding that, despite of the effectiveness of the New York Convention in brazilian jurisdiction the foreign arbitration award to be recognized and enforced in Brazil shall be subject to prior Supreme Court's exequatur by virtue of article 102, h of the Constitution that grants to Supreme Court not only exclusive jurisdiction but also the duty to homologate foreign decisions.

**9.3** Praised by supporters and applauded by jurists, the Arbitration Act is naturally still criticized by some conservatives and by a few members of the Judiciary.

The highest court of Brazil has now approved the law, and it has great supporters in the Superior Court of Justice, the second most important court in Brazil.

The remaining brazilian courts are also in agreement. They have not opposed the Arbitration Act and have given consistent interpretation to its legal provisions.

Scholars are actively publishing articles and papers on the subject, in addition to holding seminars, conferences and courses.

Important institutions have given support to arbitration chambers. In Rio de Janeiro, for example, the Trade Association, the National Insurance Federation, and the Industrial Federation have recently established the Brazilian Center of Mediation and Arbitration (Centro Brasileiro de Mediação e Arbitragem).

Most importantly, the arbitration clause has become common practice in contractual negotiations.

In conclusion, the first stage for the implementation of arbitration in Brazil have gained a stronghold in brazilian legal community.

**Abstract**

The article provides an overview of the arbitration in Brazil, recently revitalized with the enactment of the Arbitration Act (Law n° 9307) in 1996.

Contrary to common perception Brazil has a long-standing tradition in the use of arbitration. Over decades Brazilian sovereign state has applied arbitration to resolve border disputes and indemnification claims with a variety of countries. At the end of XIX century and at the beginning of XX's Brazil also signed several multilateral and bilateral treaties which included arbitration as a means to solve related disputes.

The article begins with a concise history of the arbitration in Brazil and touches the two main obstacles that impaired the development of the arbitration in the country, that is, the ineffectiveness of the arbitration agreement and the compulsory homologation of the arbitral award by judicial court (request for approval).

The author registers the challenge of unconstitutionality of the Arbitration Act, already dismissed by majority of Supreme Court justices and also comments the jurisdictional nature of the arbitrators' activity.

As well he stresses the principles of autonomy of the arbitration clause and the Kompetenz-Kompetenz embraced by Brazilian legislation.

The author also takes the opportunity to raise current concern among scholars regarding the arbitrability

of issues arising out of administrative contracts (public law) and consumer agreements.

On the other hand the article clarifies the new legal structure that seeks appropriate protection toward the effectiveness of the arbitration agreement and that finally puts an end to the unnecessary request for approval.

The recent incorporation of the New York Convention by Brazil is subject of author's comment on item 9 of the article. As a consequence of New York Convention's ratification, a new issue was raised and is currently under strong debate, that is, the real need of Supreme Court's exequatur to grant validity to foreign arbitral award in Brazilian jurisdiction.

At the end of the article the author sums up recent developments of arbitration in Brazil.

**Resumen**

Se lleva a cabo un estudio acerca del arbitraje en Brasil recientemente revitalizado con la entrada en vigor de la Ley dc Arbitraje brasileiia de 1996. Contrariamente a la comun percepcion en Brasil existe una larga tradition acerca del uso del arbitraje. Se realiza igualmente, una alusiva y concisa referencia a la historia del arbitraje en Brasil asi como a su dcsarrollo posterior con especial referencia a la ineficacia de las rcsolucioncs judicialcs quo impedian la homologacion de los laudos arbitrales. Igualmente se hace referencia a euestiones relativas a la aceptacion del principio Kompefenz-Kompetenz en la legislation brasilena y a los aspectos que plantean la arbitrabilidad de los contratos administrativos y en materia de consumidores. For ultimo se realiza un estudio acerca de la incorporation de Brasil al Convenio de Nuevo York asi como al mas reciente desarrollo del arbitraje en Brasil.

Endnotes

1. *Co-drafter of Brazilian Arbitration Act (Law n° 9307/96). Brazilian delegate appointed to join the Drafting Commission on the Standard Proceedings Rules of Arbitration for Mercosul, Chile and Bolivia. Visiting Professor at Escola da Magistratura do Estado do Rio de Janeiro. Author of books on Arbitration and of several papers published in the field of Arbitration and Commercial Law. Arbitrator and legal counsel for national and international arbitrations. Professor and Coordinator of Postgraduate Studies on Arbitration at Fundacão Getúlio Vargas (Rio de Janeiro and Sao Paulo).

2. The Earl of Ilajuba was appointed member of the Arbitral Tribunal established to solve disputes arising out of the war of Secession (Alabama case).

3. Art. 160

4. M.B.V. Commercial and Export Management Establishment vs. Resil Industria e Comercio Ltda, Agravo Regimental cm Sentenca Estrangeira n. 5206-7, Reino da Espanha.

5. Uniao Federal vs. Espolio Henrique Lage, RTJ 52/168 e RTJ 68/382.

6. In the path of the renowned Italian Enrico Tullio Liebman, most brazilian scholars apply to (the legal awards the quality (not the effectiveness) of res judicata.

7. Art. 32 - An arbitral award is null and void if:

I. the compromisso is null and void;

II. it was made by someone who may not serve as an arbitrator;

III. it does not fulfill the requirements of Art. 26 of this Law;

IV. it is rendered beyond the limits of the arbitration agreement;

V. it does not resolve the entire dispute submitted to arbitration;

VI. it is proven that is was rendered via false statements, force, or passive corruption;

VII. it is rendered after its time limit has expired, with respect to Art. 12, section III of this Law; and

VIII. the principles covered by Art. 21, para. 2 of this law are not respected.

8. Art. 18 - The arbitrator is de facto and legally a judge, and the award rendered is not subjects to judicial review, appeal or homologation.

9. Art. 22 The arbitrator or arbitral tribunal may take depositions (public testimony of a witness reduced to writing) of the parties, hear witnesses and determine the carrying out of expert examinations or other evidence they deem necessary, by request to the parties or by written notice.

§ 2° In case of absence without just cause from the personal deposition session, the arbitrator or the tribunal shall take into consideration the behavior of the absent party in rendering its award; if a witness is absent, under the same circumstances, the arbitrator or president of the arbitral tribunal may request judicial authority to conduct examination of a reluctant witness, verifying the existence of the arbitration agreement.

§ 4° With the exception of the provisions of para. 2, the arbitrators may request the judicial body that would have originally been competent to hear the case, for enforcement or protective measures.

10. This choice of law is clearly set forth in art. 38, II, of the arbitration law: the homologation of a foreign award may be denied if the defendant demonstrates that the arbitration convention was not valid according to the law to which the parties had submitted it; or, if this is lacking pursuant to the law of the country where the award was rendered.

11. Art 2. § the parties may freely choose the rules of law applicable to the arbitration as long as these do not violate good custom and public order.

12. The parties may also agree that the arbitration shall be conducted pursuant to general principles of law, usage and custom, and international rules of trade.

13. Art. 2. Arbitration may be in law or ex aequo et bono, as the parties choose.

14. Art. 5. The parties may refer in the clausula compromissoria (submission agreement) to the rules of an institution or entity specializing in arbitration, and the arbitration may be initiated and conducted in accordance with these rules, or at the same time, the parties may establish in their own clausula compromissoria, or in another document, the agreed upon form for instituting arbitration.

15. Art. 21§2: “The principles of the adversary system, of the equality of the parties, of the impartiality of the arbitrator and the arbitrator's free discretion.”

16. Art. 1 Anyone legally capable of entering into agreements may submit to arbitration disputes relating to freely transferable property rights.

17. Corporate Act, art. 109, par 3.

18. See "Aspectos Fundamentais da Lei de Arbitragem", Pedro A. Batista Martins, Selma Lemes and Carlos Alberto Carmona, Forense, 1999, page 162.

19. Civil Appeal n. 9696 - Sao Paulo, Rel. Min. Sydney Sanches (RTJ 133/167).

20. Mandato de Seguranca n. 1998/002003066-9 TJDF, 18 may 1999, rel. Des. Nancy Andrighi.

21. Decision 188/95, Rio-Niteroi bridge's concession, DNER and Consortium Andrade Gutierrez / Camargo Correa.

22. Law n. 8987/95.

23. Law n. 9472/97.

24. Law n. 9478/97.

25. Law n. 10233/2001.

26. The brazilian arbitration act is also called "Marco Maciel law", that is because Mr. Marco Maciel was the Senator that filed the arbitration bill in the Congress, in 1992. Later, Mr. Marco Maciel was elected Vice-President of Government Fernando Henrique Cardoso. He stayed in the office for two terms, from 1994 to 2002.

27. Art. 5. The parties may refer in the clausula compromissoria to the rules of an institution or entity specializing in arbitration, and the arbitration may be initiated and conducted in accordance with these rules, or at the same time, the parties may establish in their own clausula compromissoria, or in another document, the agreed-upon form for instituting arbitration.

28. It must be clarified that in the past the foreign arbitral decision depended on the previous homologation by state court of the country of origin, as a condition for the requirement of exequatur before the Supreme Court.

29. Sentenca Estrangeira Contestada n. 5828-7, Norway, 6 december 2000, rel. Min. Ilmar Galvao,

Federal Official Gazette, 23 february, 2001 and Sentenca Estrangeira Contestada n. 5847-1, Gerat Britain and North Ireland 1 december. 1999, Rel. Min. Mauricio Correa, Federal Official Gazette 17. december. 1999.

30. Issued by Decree 4311 of 23rd July 2002, and published in the Federal Official Gazette of 07/24/2002. The ratification instrument was filed with the UNO on 17 June 2002.